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Before the
FEDERAL COMMUNICATIONS COMMISSION MAY 10 1997
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Local Competition) CC Docket No. 96-98
Provisions in the telecommunication Act)
of 1996)

COMMENTS

ALLIANCE FOR PUBLIC TECHNOLOGY

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SUMMARY

The Alliance for Public Technology, a consumer interest group devoted to promoting universal access to advanced telecommunication services by all consumers urges the Commission in these comments to adopt rules consistent with four basic principles. These principles, if followed, will result in rules that will foster facilities based competition in the local exchange, while at the same time assuring that the public switched telephone network is fairly compensated for the joint and common costs allocable to the interconnecting company. It is this allocation that will create the incentives for ever improving,

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ubiquitous telecommunication networks, and, at the same time, will avoid unnecessary rate increase for consumers.

COMMENTS

The Alliance for Public Technology (APT)¹, is a Washington, DC based nonprofit, tax-exempt coalition of public interest groups with diverse grassroots membership and of individuals who are concerned with promoting policies that foster universal access to a broadband, high capacity, switched network capable of transmitting and receiving voice, data, and video services. APT's charter is to foster universal access to advanced telecommunications services and infrastructure, and to help eliminate barriers to that access. APT seeks a maximum contribution by the telecommunications and information services to the quality of life of all Americans, especially in fields like education, health care, and democratic processes.

While we recognize that the "Devil is in the details," our comments are necessarily more general in nature, and focus rather on the principles that we believe should guide the Commission in

¹ The Alliance was founded in 1988 and now has over 2100 members, including 105 organizational members. The Board of Directors of the Alliance is made up of the following nationally recognized consumer leaders. A list of the Board is Attached as Appendix A.

this most important rule making proceeding. Before we turn to a discussion of those principles, we wish to emphasize our strong commitment to the thrust of 1996 Act -- removing barriers to competitive entry and fostering such entry. As has been shown in the area of customer premises equipment and to a significant extent, long distance, competition serves the consumer and public interest far better than any regulatory scheme in spurring innovation, efficiencies and driving prices to marginal costs. Further, as Section 706 makes clear, it can play an important role in accelerating the availability of advanced telecommunication infrastructure, as defined in that section (and again strongly supported by APT in its seminal document, "Connecting Each to All"). It is thus of great importance to the eventual goal of the universal service concept -- advanced telecommunications services available to all Americans and regions.

GENERAL PRINCIPLES

We turn now to the general principles that we urge should govern this interconnection proceeding. They are simply stated. However, we recognize how difficult it will be to implement them in this complex and dynamic field.

I. The FCC rules fleshing out the interconnection standards must be consistent with the statutory provisions.

This may seem to be an obvious point and therefore just "filler" or a "yawner," but the warring parties fought very hard in the legislative process. There is a tendency to continue to fight fiercely at the administrative level. That is both natural and permissible when the statutory provision must or can be appropriately amplified.

What is not permissible is to try to re-write the statute again at the agency level. The statute can of course be improved upon, since any new statute likely represents a compromise -- a necessity in the legislative process of this nature. If the Commission does not resist efforts by competing interests to re-write the law, the result will be reversal in an inevitable appeal, and resulting delay and confusion. Stated differently, if the construction of the statute is clear in light of its terms or using "traditional tools of statutory construction, ... then that interpretation must be given effect." *NLRB v. United Food & Commercial Workers Union*, 108 S.Ct. 413, 421 (1987); *Chevron*

U.S.S. v. National Resources Defense Council, 467 U.S. 837, 843 (1984).

To illustrate, consider the resale requirement in section 251(c)(4) -- to offer for resale at wholesale rates any telecommunication service provided at retail to subscribers. Wholesale prices are delineated in section 252(d)(3) as the retail rates charged to subscribers, "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." The Commission clearly must hew to this definition. It cannot decide to focus generally on "avoidable" costs or to push for deep discounts to spur greater use of resale as an immediate competitive tool. Congress wanted resale to be available but did not want to push this competitive concept to such an extent that it might undermine or inhibit the development of facilities-based competition, clearly sought by the Act because it constitutes all-out competition and not competition based significantly or substantially on the incumbent LEC's facilities. The Commission must be faithful to this Congressional balance of competing considerations. It follows also that since there must be a determination that as to what costs "will be avoided" in particular situations, this is a matter to be resolved on the

State level, subject to the above guidance. See discussion, infra, at point 3.

II. Even where the statute leaves room for construction and amplification, the Commission must take care to act consistently with the Congressional purpose and balance.

This principle is best illustrated by consideration of 252(d)(1) and its relationship to the resale provision, 252(d)(3), discussed in 1, above. This provision provides that State determination of the "just and reasonable rate for network elements..." shall be based on the "cost," shall be "nondiscriminatory," and "may include a reasonable profit." Here there is more ambiguity as there is no constructive guide to the term, "cost," either in the statute or the conference report accompanying the statute. So the Commission has the opportunity and the responsibility to give some further guidance.

To continue the illustration, consider what should be the "just and reasonable" rate for probably the most important network element, access to the unbundled local loop segment. The Commission faces a conflict here: It can decide upon the lowest possible costing methodology such as Total System Long Run

Incremental Costing (TSLRIC), or it can elect a Fully Distributed Cost (FDC) approach, that takes into account embedded investment costs and "joint and common" costs. If it chooses the former, it will certainly spur great use of the LEC's local loop by large companies like the major facilities-based IX carriers, and that will enable a considerable amount of immediate competition, but based upon the incumbent's local loop. This, in turn, raises the issue whether that will conflict with the essential long term goal of the Act -- facilities based competition to the LEC, including its local loop. For, as noted, it is that type of all-out competition, above all else, that spurs innovation and efficiencies, and is therefore by far the most desired form.

Further, there is the question whether an approach along the lines of TSLRIC can be squared with the resale provision in (c)(3): If one resells the entire LEC service, the discount is quite limited (i.e., to "avoidable" costs); if one, in effect, "resells" the most important part of the LEC service, the local loop, the discount is then quite large under TSLRIC. That translates, as a practical matter, into relegating the resale provision to a minor or non-existent role, and making the unbundled "network element" (here the local loop) the linchpin of competition. If, as urged above, resale was not to become the

dominating form of competition -- if the Act means to spur competition to the crucial element, the local loop, as soon as feasible, query whether taking the route like TSLRIC is sound policy.

In short, here again the Commission must strike a balance and must do so in light of the overarching purposes and spirit of the 1996 Act. We suggest that to be consistent with the purposes and spirit, the Commission should give guidance to the States that results in economic costs for the network element that are true but reflective of the above considerations, and thus not simply along the lines of TSLRIC.

III. Subject to the Commission's rules giving guidance, where appropriate, it is the States that must do the "heavy rowing" here.

The Commission should adopt national rules amplifying the statutory standards where such amplification is clearly in order or needed and is consistent with the standards. The example in II, above, is one such instance, and there are others such as the technical standards for interconnection. There are several areas where the Commission and States must act cooperatively such as in

the universal service area, with its Joint Board requirement. In most of the areas involving the interconnection checklist, it is the States that will make the final cut or determination, subject to review in the Federal district court.

This is, of course, the statutory scheme -- negotiation between the parties and in the event of deadlock, resolution by the States within the designated nine months time frame. This scheme is sound policy for many reasons. First, the Commission, for example, would "choke" on the task of determining the reasonableness of the charges for the many network elements for LECs in the 50 States. It needs to rely on the State resources.

Second, the States represent "grass roots" regulation. They are aware of the circumstances pertinent to the particular situation, and thus better tailor their decisions to the facts of the case. And third, the States are laboratories in this important field. Many States have been ahead of the Commission in dealing with the interconnection problems in introducing competition. The Commission has then learned from such State action.

Finally, if the Commission makes a mistake in policy, it has widespread, national effects. If a State errs, it is confined to

one area. This does not mean that the Commission is abdicating general guidance. As stated, where it sees its way clear, the Commission should "steer," leaving the rowing to the States. Indeed, after gaining experience from the State laboratories, the Commission may want to return to some area and give some further guidance on a national basis. The process we have outlined, we believe, will best serve the national interest and scheme of the 1996 Act.

IV. We agree with the Commission that this proceeding, the access proceeding, and the universal service proceeding are all inter-related, and that action must be taken expeditiously in all of them if the public interest is to be truly served.

No extended discussion is needed on this point. It is clear that interconnection must be fostered, that access charges must be reformed so that proper economic signals are given in this new increasingly competitive milieu, and that with these changes, universal service must be revised so as to be maintained and advanced (see APT's comments filed in Docket No. 96-45), and all this done in an expedited but orderly fashion that avoids disruption such as "rate shock." With progress on all these

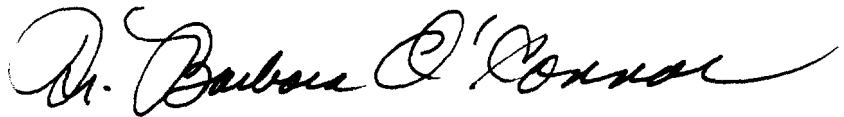
fronts, there will be great benefits to the consumer and to the nation. Without such progress, we will not obtain the maximum contributions that telecommunications can make to efficiencies, so greatly needed in this era of global competition, and to the quality of life in the information society that is so rapidly emerging, in fields like education, health care, and democratic process.

CONCLUSION

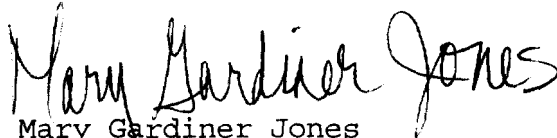
In summary, APT believes the Commission is attempting to be too ambitious in this proceeding by specifying too detailed a set of rules. We suggest, instead, that the Commission give the greatest possible latitude to the States, consistent with the letter and spirit of the new Act. To do so, it must also assure that the interconnections rules assure that there is a fair allocation of the joint and common cost to the interconnecting companies. It is only in this way that the Commission can avoid the potential for significant rate shock at the local level, while creating disincentives for facilities based competition.. What must be done is to assure that a fully distributed cost model be used to assure proper cost allocation and contribution by those who interconnect to the public switched network.

Finally, APT again urges the Commission to evaluate its interconnection rules against the yard stick of the incentives it creates for the construction and deployment of advanced networks and services to the home. Competition is not itself the goal. We are concerned that a myopia is beginning to fall over the Commission proceeding, with focus on the short term superficial competition, and not on the longer term structural changes that are essential for the goals of the 1996 Act and of the public interest to be achieved.

Respectfully Submitted
Alliance for Public Technology



Dr. Barbara O'Connor
Chairwoman



Mary Gardiner Jones
Policy Chair

Of Counsel:
Henry Geller

901 15th St. Suite 230
Washington, DC 20005
(202) 408-1400
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Appendix A

ALLIANCE FOR PUBLIC TECHNOLOGY Board of Directors¹

Dr. Barbara O'Connor, Chairperson
Institute for the Study of Politics and Media
California State University/Sacramento

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Cárdenas International

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and the Economy

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